Office - Supreme Court, U.S.
FILED
JUL 30 1982
ALEXANDER L. STEVAS,
CLERK

No. 82-45

In The

SUPREME COURT OF THE UNITED STATES

_____ Term, 19__

GEORGE MILLER,

Petitioner,

vs.

SUPREME COURT OF PENNSYLVANIA, E.D., et al.,

Respondents.

SUPPLEMENT TO

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA, E.D., et al.

George Miller,
Petitioner
In Propria Persona
514 West Main Street
Lock Haven, Pennsylvania 17745
Telephone: (717) 748-2768

APPENDIX D

Supplement to "Petition For A Writ Of Certiorari To The Supreme Court Of Pennsylvania, E.D., et al, filed In The SUPREME COURT OF THE UNITED STATES on June 22, 1982.

Order of the Superior Court of Pennsylvania Affirming the Order of the Lower Court

(Filed-October 30, 1981)

SUPERIOR COURT OF PENNSYLVANIA
Philadelphia District

DOCKET NO. 1210 Philadelphia 1980

At a Stated Term of the Superior Court of Pennsylvania, in and for the Philadelphia District, held at 2044 Old Federal Courthouse, Ninth and Chestnut Streets, Philadelphia, Pennsylvania, on the fourth day of February, one thousand nine hundred and eighty one.

Present:

Honorable Richard B. Wickersham, Honorable Zoran Popovich, Superior Court Judges

Honorable G. Harold Watkins, Senior Judge (retired, on temporary judicial service)

Appendix D

J. 265/1981

COMMONWEALTH OF PENNSYLVANIA

V.

J. MICHAEL WILLIAMSON, ESQUIRE

Appeal of: George Miller

Appeal from the Order of Court of Common Pleas, Criminal Division of Clinton County at No. 242 of 1979.

PER CURIAM:

Order of the lower court affirmed.

J U D G M E N T

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the judgment of the Court of Common Pleas of CLINTON County be, and the same is hereby AFFIRMED.

Dated: October 30, 1981

MEMORANDUM OPINION:

Appendix D

On September 21, 1979, George Miller, appellant, appeared before Carl R. Hamberger, Justice of the Peace, Magisterial District No. 25-3-01 in Lock Haven, Pennsylvania and swore out a criminal complaint (private) against J. Michael Williamson, Esquire, also of Lock Haven, Pennsylvania alleging that the defendant had committed certain crimes in October and November 1975 including tampering with public records or information, obstructing administration of law or other governmental function, official oppression, and criminal conspiracy.

Pa. R. Crim.P. 133(B) entitled "Private Complaints" provides as follows:

> (1) When the affiant is not a police officer as defined in Rule 51(C) and the offense(s) charged include(s) a misdemeanor or felony which does not involve a clear and present danger to any person or to the community, the complaint shall be submitted to the attorney for the Commonwealth, who shall approve or disapprove without unreasonable delay.

(2) The form of the complaint shall be identical to that set forth in part (A) of this Rule, except that the following shall appear above the caption on the first page:

PRIVATE COMPLAINT

DISTRICT ATTORNEY'S OFFICE

Approved

Disapproved because:_____

_____

_____

_____

DATE SIGNATURE

(3) If the attorney for the Commonwealth

(i) approves the complaint, he shall indicate his decision on the complaint form and transmit it to the issuing authority.

(ii) disapproves the complaint, he shall state his reasons on the complaint form and return it to the affiant. Thereafter the affiant may file the complaint with a judge of a Court of Common Pleas for approval or disapproval.

(iii) does not approve or disapprove within a reasonable period of time, the affiant may file the complaint on a separate form with

the issuing authority, noting thereon that a complaint is pending before the attorney for the Commonwealth. The issuing authority shall determine whether a reasonable period has elapsed, and, when appropriate, shall defer action to allow the attorney for the Commonwealth an additional period of time to respond.

Comment: The district attorney may may 'transmit' the complaint to the issuing authority pursuant to subparagraph (B)(3)(i) by returning it to the affiant for delivery.

Rule 105 adopted Jan. 31, 1970, effective May 1, 1970; renumbered as Rule 133 and amended Sept. 18, 1973, effective Jan. 1, 1974; amended Jan. 23, 1975, effective Sept. 1, 1975.

J. Michael Williamson, Esquire, had been District Attorney for Clinton County in the year 1975. At the time of the filing of the criminal complaint, September 21, 1979, Martin A. Flayhart was District Attorney of Clinton County and he petitioned the court to have John F. Cowley, Assistant District Attorney of Tioga County named special prosecutor for and on behalf of the Commonwealth in the instant case. The Hon-

orable Harold B. Fink, Specially Presiding, signed such an order of court on November 13, 1979.

Special prosecutor Cowley reviewed the complaint and the background evidence and disapproved the same on the basis of insufficient evidence, said disapproval occurring January 14, 1980. Thereafter, George Miller, appellant, petitioned the court of common pleas to approve his private complaint and on March 3, 1980 a hearing was held before Judge Fink in Lock Haven, Pennsylvania, at which time and place George Miller, appellant, appeared, as did J. Michael Williamson, Esquire, and George Miller presented testimony and documentary evidence in support of his complaint.

By order of April 29, 1980, Judge Fink affirmed the disapproval of the private criminal complaint by the special prosecutor holding that the prosecutor has broad prosecutorial

discretion in passing upon private complaints. Judge Fink further found that it was difficult to conceive how any issuing authority could possibly find the criminal intent necessary to bind the defendant, J. Michael Williamson, Esquire, over as to any of the criminal charges set forth in the private complaint.

We have reviewed the record in this case, the opinion of Judge Fink, the brief submitted by George Miller as private prosecutor and appellant, and we find no abuse of discretion on the part of Judge Fink in his affirmance of the decision of the special prosecutor. The special prosecutor did not abuse his discretion in disapproving the private criminal complaint and Judge Fink did not abuse his discretion in reviewing the action taken by the special prosecutor. Commonwealth v. Eisemann, 276 Pa. Superior Ct. 543, 419 A.2d 591 (1980).

Appendix D
Order of the lower court affirmed.

APPENDIX E

Supplement to "Petition For A Writ of Certiorari To The Supreme Court of Pennsylvania, E.D., et al, filed In The SUPREME COURT OF THE UNITED STATES on June 22, 1982.

Order of the Superior Court of Pennsylvania Affirming the Order of the Lower Court

(Filed-December 29, 1981)

SUPERIOR COURT OF PENNSYLVANIA
Philadelphia District

DOCKET NO. 409 Philadelphia, 1981

At a Stated Term of the Superior Court of Pennsylvania, in and for the Philadelphia District, held at 2044 Old Federal Courthouse, Ninth and Chestnut Streets, Philadelphia, Pennsylvania, on the sixth day of November, one thousand nine hundred and eighty one.

Present:

Honorable Edmund B. Spaeth, Jr., Chief Judge

Honorable Phyllis W. Beck, Honorable Frank J. Montemuro, Jr.

Appendix E

J. 2007/81

COMMONWEALTH OF PENNSYLVANIA

VS.

J. MICHAEL WILLIAMSON

APPEAL OF GEORGE MILLER

Appeal from Order entered in the Court of Common Pleas, Criminal Division, of Clinton County at No. 292 of 1980

J U D G M E N T

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the judgment of the Court of Common Pleas of CLINTON County be, and the same is hereby AFFIRMED.

Dated: December 29, 1981

PER CURIAM OPINION:

Appellant attempted to bring private criminal complaints against a former District

Appendix E

Attorney for refusal to prosecute prior private criminal complaints filed against others by appellant. The current District Attorney refused to prosecute, and appellant pursued his right under Pa. R. Cr. 133(B) to submit the disapproved complaint to the Court of Common Pleas for review. The Court of Common Pleas disapproved the complaints, finding them without any legal basis for prosecution, and the complainant appealed.

Appellant has previously litigated the same question before this court. In Commonwealth v. Eisemann, 276 Pa. Super. 543, 419 A.2d 591 (1980), appellant herein sought reversal of the very action by the former district attorney which he has now sought to have prosecuted as criminal. The Court of Common Pleas and this court held that Mr. Williamson had acted completely within his auth-ority and in accordance with the law, and that ther-

had been no abuse of discretion.

We affirm the order of the lower court.